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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/632,490	07/31/2003	David A. Skidmore	190514-1010	4399

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EXAMINER

CANFIELD, ROBERT

ART UNIT PAPER NUMBER

3635

DATE MAILED: 03/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/632,490

Applicant(s)

SKIDMORE, DAVID A.

Examiner

Robert J. Canfield

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3,7-15,17-21,24-30,32-34 and 36-47 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,7-15,17-21,24-30,32-34 and 36-47 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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1. This Office action is in response to the amendment filed 07/20/05. Claims 1-3, 7-15, 17-21, 24-30, 32-34 and 36-47 are pending. Claims 4-6, 16, 22, 23, 31 and 35 have been canceled.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 1-3, 7, 8 10, 15, 17, 18-21, and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 650,824 to Cottom.

Cottom provides a wall of masonry units each having a front/first surface surrounded by a planar beveled edge which is considered the mortar buffer and which is capable of receiving and retaining mortar. The beveled edge or "mortar buffer" joins the front surface with adjacent top, bottom and side surfaces and is shown having a constant angle of inclination. The front surface is shown as being predominantly smooth. The language "configured to reduce spillage" fails to provide any structural limitation.

Cottom fails to provide the claimed angle of inclination being approximately 30 degrees and the width of the mortar buffer is in the range of 1/16 of an inch to 1/2 of an inch, more particularly 7/32 of inch.

To have made the angle of inclination approximately 30 or 45 degrees and the width of the bevels 1/16 of an inch to 1/2 of an inch, more particularly 7/32 of inch would have been an obvious choice of design at the time of the invention to one

having ordinary skill in the art. The drawings of Cottom would certainly suggest to one having ordinary skill in the art at least one angle within the range of angles of 10-60 degrees. The particular angles of 30 or 45 degrees would have been an obvious choice of design to provide a desired ornamental look to the blocks.

Cottom provides motivation for "any desirable ornamental surface" at lines 47+.

One of ordinary skill in the art would readily recognize that by changing the angle inclination different ornamental appearances may be achieved. Similarly, the dimensions of the blocks and more particularly the bevels of Cottom could be sized as desired and the width angle of the bevel could be changed to provide a desired ornamental look.

4. Claims 11, 12, 14, 25-27, 29, 43, 44 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 650,824 to Cottom in view of U.S. Patent 2,667,664 to Ferrell.

Cottom provides each of the elements of these claims except that the first surface and second surfaces of the first and second blocks are characterized as being ground, polished, and predominantly shiny.

Ferrell teaches at column 1, lines 5-13, that it was known at the time of the invention to provide a surface of masonry units with a smooth, polished, high gloss finish.

It would have been obvious at the time of the invention to one having ordinary skill in the art that the first surface of the masonry units of Cottom could have

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been provided with a ground or polished smooth shiny/glossy finish as taught by Ferrell as Cottom suggests that any desired ornamental surface" may be provided. As the unit is being claimed the method in which the poish surfaced is arrived at is not required to meet the claim.

5. Claims 13, 28 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 650,824 to Cottom in view of U.S. Patent 1,872,522 to Stuckey.

Cottom provides each of the elements of these claims except that the first surface and second surfaces of the first and second blocks are characterized as being predominantly rough.

Stuckey teaches at page 2, lines 100-103, that it was known and desirable at the time of the invention to provide a surface of masonry units with a rough stone decorative face.

It would have been obvious at the time of the invention to one having ordinary skill in the art that the first surface of the masonry units of Cottom could have been provided with a rough stone decorative face as taught by Stuckey as Cottom suggests that any desired ornamental surface" may be provided.

6. Claims 1-3, 7-10, 15, 17-21, 24, 30, 32 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent D 457,971 to Schrader et al.

Schrader masonry units in the form of blocks or bricks each having a front/first surface surrounded by a planar beveled edge which is considered the mortar buffer and

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which is capable of receiving and retaining mortar. The beveled edge or "mortar buffer" joins the front surface with adjacent top, bottom and side surfaces and is shown having a constant angle of inclination. The front surface is shown as being predominantly smooth. The angle of inclination shown in the figures appears to be approximately 45 degrees. Additional bevels or mortar buffers are shown surrounding other surfaces (figures 4-7). The beveled edge or "mortar buffer" joins the front surface with adjacent top, bottom and side surfaces and is shown having a constant angle of inclination. The front surface is shown as being predominantly smooth. The language "configured to reduce spillage" fails to provide any structural limitation.

Schrader fails to provide the claimed angle of inclination being approximately 30 or 45 degrees and the width of the mortar buffer is in the range of 1/16 of an inch to 1/2 of an inch, more particularly 7/32 of inch.

To have made the angle of inclination approximately 30 degrees and the width of the bevels 1/16 of an inch to 1/2 of an inch, more particularly 7/32 of inch would have been an obvious choice of design at the time of the invention to one having ordinary skill in the art. The drawings of Schrader would certainly suggest to one having ordinary skill in the art at least one angle within the range of angles of 10-60 degrees. The particular angle of 30 or 45 degrees would have been an obvious choice of design to provide a desired ornamental look to the blocks. One of ordinary skill in the art would readily recognized that by changing the angle inclination different ornamental appearances may be achieved. Similarly, it would have been obvious to one having ordinary skill in the art that the

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dimensions of the blocks and more particularly the bevels of Schrader could be sized as desired and the width angle of the bevel could be changed to provide a desired ornamental look.

7. Claims 1-3, 7-10, 15, 17-21, 24, 30, 32-34, 36-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,101,776 to Conley.

Figure 4 as applied to a wall (Col. 2, line 50) provides masonry units 14 having mortar buffers 22 shown at an angle of inclination at approximately 45 degrees and mortar 34 disposed between units and on the buffers 22.

The beveled edge or "mortar buffer" joins the front surface with adjacent top, bottom and side surfaces and is shown having a constant angle of inclination.

The front surface is shown as being predominantly smooth. The language "configured to reduce spillage" fails to provide any structural limitation.

Conley fails to provide the claimed angle of inclination being approximately 30 or 45 degrees and the width of the mortar buffer is in the range of 1/16 of an inch to 1/2 of an inch, more particularly 7/32 of inch.

To have made the angle of inclination approximately 30 or 45 degrees and the width of the bevels 1/16 of an inch to 1/2 of an inch, more particularly 7/32 of inch would have been an obvious choice of design at the time of the invention to one having ordinary skill in the art. The drawings of Conley would certainly suggest to one having ordinary skill in the art at least one angle within the range of angles of 10-60 degrees. The particular angle of 30 degrees would have been an

obvious choice of design to one having ordinary skill in the art because the claimed angle would not perform differently than the angle shown and one of ordinary skill in the art would have readily recognized that by varying the angle of the bevel one can change the thickness of the mortar line for both function and aesthetics.

Similarly, the dimensions of the blocks and more particularly the bevels of Conley could be sized as desired and the width angle of the bevel could be changed to provide a desired ornamental look.

The surface finish is viewed as a choice of design which would have been obvious at the time of invention to one having ordinary skill in the art for aesthetic reasons. Smooth, polished, shiny, ground and rough surfaces are well known and demonstrated in the art of record.

The language "is produced using a grit level of at least 80" is method type limitation not needed to meet the article claim. Further, the grit used is viewed as a choice of design, which would have been obvious at the time of the invention to one having ordinary skill in the art to achieve a desired degree of smoothness, shine or gloss.

8. In response to applicant's argument that Cottom, Schrader and Conely fail to provide a mortar buffer configured to receive and retain mortar, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed



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invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963).

Applicant's argument that the angle and width would not have been obvious choices of design because they have functional significance in facilitating mortar application is not found persuasive because the choice of design was for ornamental purposes. MPEP 2144 states that the rationale or motivation may be different from applicant's. Further the broad range disclosed by applicant is certainly suggested with the prior art applied and teaches away from any criticality.

The examiner has provided secondary references teaching the claimed finished block surfaces as such these arguments are moot.

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Each of the newly citred references clearly show mortar received on an edge "buffer".

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert J. Canfield whose telephone number is 571-272-6840. The examiner can normally be reached on M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on 571-272-6842. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Robert Canfield  
Primary Examiner

